

आयकर अपीलिय अधिकरण, मुंबई "ई" खंडपीठ
Income-tax Appellate Tribunal -"E"Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं सी. एन. प्रसाद,न्यायिक सदस्य
Before S/Shri Rajendra,Accountant Member and C.N. Prasad,Judicial Member
आयकर अपील सं./ITA/2189/Mum/2012,निर्धारण वर्ष /Assessment Years: 2008-09

ACIT, Central Circle-29 Room No.411, 4 th floor Aayakar Bhavan, M.K. Road Mumbai-400 020.	vs.	M/s. Shoppers Stop Ltd. Eureka Towers, A-Wing, 9 th Floor, Mindspace, Link Road Malad(W),Mumbai-400 064. PAN:AABCS 4383 A
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आयकर अपील सं./ITA/1753/Mum/2012,निर्धारण वर्ष /Assessment Years: 2008-09

M/s. Shoppers Stop Ltd. Mumbai-400 064.	vs.	ACIT, Central Circle-29 Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by:Shri Sanjeev Kashyap-DR

Assessee by: Ms. Aarti Sathe

सुनवाई की तारीख / Date of Hearing: 27.07.2016

घोषणा की तारीख / Date of Pronouncement: 27.07.2016

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dt.23.1.2012 of CIT(A)-40, Mumbai the Assessing Officer(A.O) and the assessee have filed the present appeals.

2.Assessee-company,engaged in the business of retailing a variety of household and consumer products,filed its return of income on 29.9.2008,declaring its income at Rs.27.51 crores.The AO completed the assessment u/s.143(3) of the Act on 16.12.10 determining the income of the assessee at Rs.36.26 crores.

ITA/2189/M/12:

3.Effective Ground of appeal raised by the AO is about deleting the disallowance of unascertained expenditure being reward points against the current year's sales.During the course of hearing before us it was brought to our notice that similar question arose in the appeals of the earlier year and the Tribunal had decided the issue in favour of the assessee while deciding the appeals for the AY.2003-04&07-08(ITA/No.1835/Mum/2010,dt.25.1.2012 & ITA/5460/ Mum /2010,dt.24.2.12). We find that while deciding the appeal for the AY.2003-04 the Tribunal had held as under :-

"11.We fully agree with the aforesaid findings of the Commissioner (Appeals).The facts, issues, and the findings are brought out nicely by the Commissioner(Appeals). As and when the customer of the assessee makes a particular purchase the customer is given a monetary right in the form of rebate in the cost of goods that he will purchase at a future date.Thus, and when a right is given, the assessee incurs a liability which it has claimed as marketing expenditures.

The assessee, based a historical data in a scientific manner, has estimated that only 50% of the reward points given are likely to be encashed by the customers. Out of this 50% of the gross profit margin is reduced and the balance is only claimed as expenditure. On a direction from the Bench the assessee has also filed data from the AY 2005-06 to the AY 2010-11, which shows that the points lapsed was shown as income. The assessee has also proved that this is a consistent accounting policy being followed year after year. On this factual matrix, we hold the findings of the Commissioner(Appeals). Consequently, the Ground raised by the revenue is dismissed.”

The above order was followed by the Tribunal while deciding the order for the AY.2007-08(supra). Respectfully, following the above orders we decide the effective Ground of appeal against the AO.

ITA/1753/Mum/2012:

4.The solitary issue raised by the assessee is about disallowance made by the AO u/s.14A of the Act. During the assessment proceedings, the AO found that the assessee had made investments in shares, that the value of investment as on 31.3.2008 was Rs.80.72 crores, that it had claimed interest expenditure of Rs. 11.23 crores. He directed the assessee to explain as to why disallowance u/s.14A r.w.Rule 8D of the Income tax Rules,(1962) should not be made. The assessee submitted that it had sufficient own funds and there was no justification for making disallowance u/s.14A. However, the AO did not agree with the assessee and made an addition of Rs.1.50 crores [Rs.1.18 u/r 8D (ii) + Rs.32.40 lakhs u/r 8D(iii)] .

5.Aggrieved by the order of the AO the assessee preferred an appeal before the First Appellate Authority (FAA) and contended that during the year under appeal it had made investment of Rs.31.81 crores out of the interest free surplus fund, it had sufficient funds by way of cash profits of Rs.46.24 crores. The assessee relied upon the case of Reliance Utilities and Power Ltd. (313 ITR 450). After considering the submission of the assessee and the assessment order, the FAA referred to case of Godrej and Boyce Mfg. Co.Ltd. (328 ITR 81) and held that AO was authorised to make reasonable disallowance u/s.14A by making an estimate of attributable expenditure, that distinction between the investments out of the borrowed funds and own funds had been taken away by Rule 8D of the Rules. Finally, he upheld the order of the AO.

6. Before us, the Authorised Representative (AR) argued that assessee had not claimed any expenditure, that no exempt income was shown in the return of income, that it had made investment in the subsidiaries for strategic reasons, that it had sufficient non-interest bearing funds. She referred to page 20 of the PB wherein details of investment made in subsidiary companies was given. She relied upon the case of HDFC Bank Ltd. (383 ITR529). The Departmental Representative (DR) supported the order of the FAA.

7. We have heard the rival submissions and perused the material before us. We find that assessee had not claimed any deduction in respect of exempt income nor has it claimed any expenditure against the income which does not form part of the total income. Thus, both the basic ingredients for making a disallowance u/s. 14A are missing. Secondly, the fund flow statement made available to the FAA, during the appellate proceedings, clearly show that it had sufficient own funds to make investments (Pg-1 of the PB). The FAA has admitted that funds available to the assessee were more than the investments made during the year under consideration. Therefore, in our opinion there was no justification for making disallowance as per the provisions of section 14A r.w.r 8D of the Rules. Considering all these factors we are of the opinion that the FAA was not justified in upholding the order of the AO. Hence, reversing his order we decide the effective ground of appeal in favour of the assessee .

As a result appeal filed by the AO stands dismissed and assessee's appeal is allowed.

फलतः निर्धारिती अधिकारी की अपील नामंजूर की जाती है और निर्धारिती की अपील मंजूर की जाती है.

Order pronounced in the open court on 27th July, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 27 जुलाई, 2016 को की गई।

Sd/-

(सी. एन. प्रसाद / C.N. Prasad)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 27.07.2016.

Jv. Sr. PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

Sd/-

(राजेन्द्र / Rajendra)

लेखा सदस्य / ACCOUNTANT MEMBER

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "E " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**